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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

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No. 518

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PATRICK CUDAHY FAMILY COMPANY,  
*Petitioner,*  
*vs.*

CHESTER BOWLES, PRICE ADMINISTRATOR.

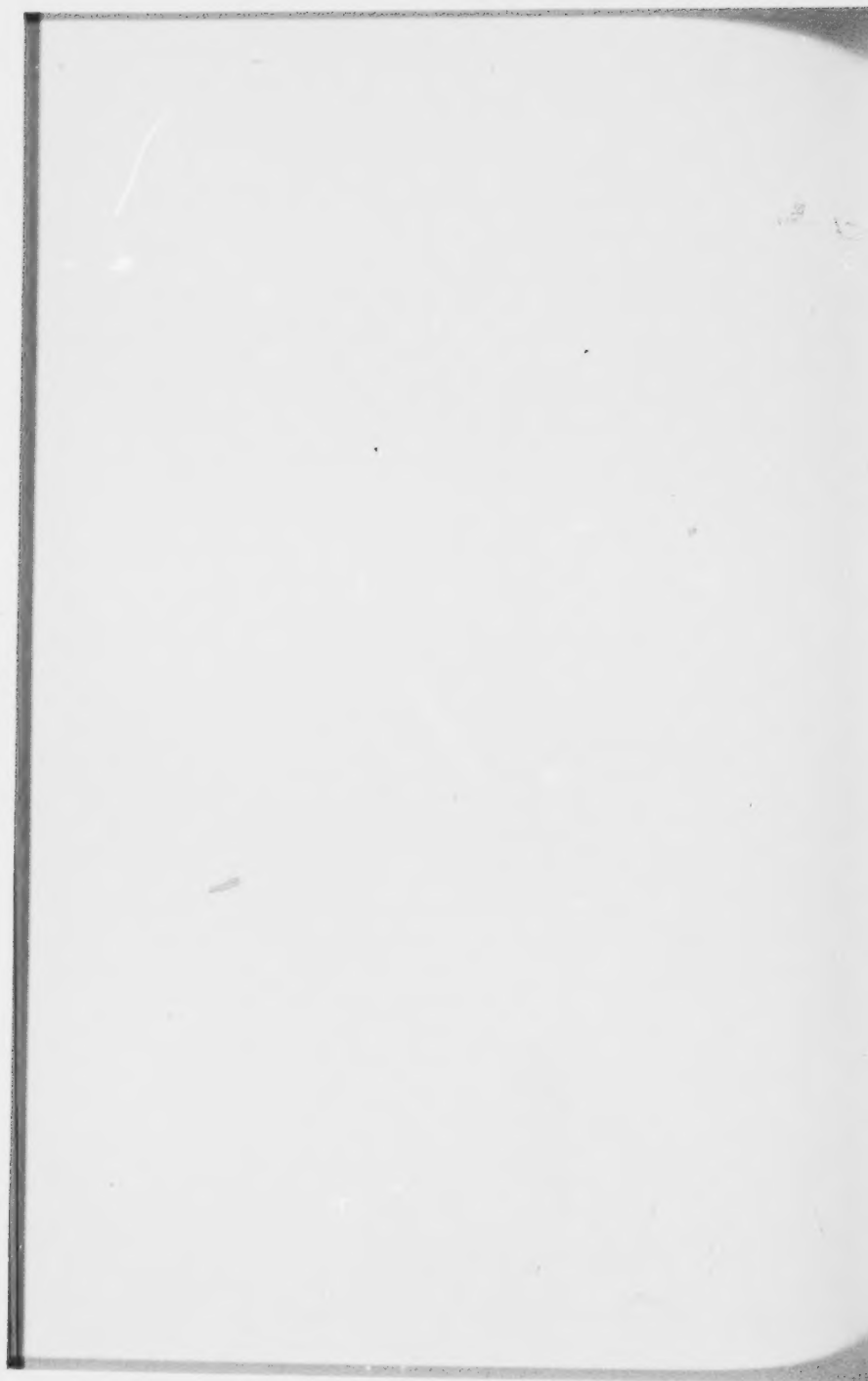
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PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES EMERGENCY COURT OF AP-  
PEALS.

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SUPREME COURT OF THE UNITED STATES

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**No. 518**

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PATRICK CUDAHY FAMILY COMPANY,  
*Petitioner and Complainant Below,*

*vs.*

CHESTER BOWLES, PRICE ADMINISTRATOR,  
*Respondent and Respondent Below.*

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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES EMERGENCY COURT OF AP-  
PEALS.**

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*To the Honorable the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your petitioner respectfully shows:

**I.**

**Summary Statement of Matter Involved.**

This proceeding was brought by way of a suit by petitioner in the United States Emergency Court of Appeals to review an order of the Price Administrator (acting through the Regional Director of Region VI) dated May 21, 1943 (R. 34) which order denied a protest of the petitioner (R.

10) against an order (R. 43) of the Rent Director of the Milwaukee Defense-Rental Area which order had denied petitioner's petition for an adjustment of rent of a housing unit owned by petitioner.

On January 16, 1939, petitioner, a Wisconsin corporation, as landlord, leased apartment #717-8 in the Cudahy Tower located in Milwaukee County, Wisconsin, to a tenant for a term of two years beginning May 1, 1939, at a rental of \$150.00 per month (R. 14-26). The lease contained the following provision:

"It is mutually agreed and understood that this lease shall stand, without notice from either party, renewed on identical terms for a like successive period unless either party shall at least 60 days before the expiration of the demised period notify the other in writing to the contrary" (R. 22).

Neither party gave any notice under the above clause so that the rent on March 1, 1942, was \$150.00 per month.

On July 24, 1942, the Price Administrator, without notice, adequate opportunity for hearing or proper findings of fact, issued Maximum Rent Regulation #35 effective August 1, 1942, covering Milwaukee County, Wisconsin, which retroactively fixed all rents in effect on March 1, 1942, in that area as the maximum rent which could be charged for a housing accommodation, subject to adjustment within the discretion of the Administrator upon certain grounds (R. 44-58). One of the grounds upon which a landlord could petition the Administrator to try to obtain relief to adjust the rental above that being collected on March 1, 1942, is set forth in Sec. 1388.3055 (a) (5) as amended November 23, 1942, reading as follows:

"There was in force on March 1, 1942, a written lease, for a term commencing on or prior to March 1, 1941, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area

for comparable housing accommodations on March 1, 1942 \* \* \* (R. 59).

On March 1, 1942, the petitioner was renting two other identical apartments in the same building in the same tier of apartments, one above and one below the apartment in question, at \$175.00 per month (R. 12). The generally prevailing rent in the area for housing accommodations comparable to apartment No. 717-8, was not less than \$175.00 per month and \$150.00 per month was substantially below such general prevailing rent for comparable accommodations in the Defense-Rental Area in question on March 1, 1942 (R. 12; Comp. p. 3; R. 3; Answ. p. 1; R. 6).

The landlord (petitioner here) on October 28, 1942, petitioned the local Rent Director for an adjustment of the rent of the unit involved to \$175.00 per month upon the grounds set forth in the above quoted section of the Regulations (R. 37-42), namely that the rent of apartment No. 717-8 on March 1, 1942 was substantially lower than the generally prevailing rent for similar accommodations because there was in effect a written lease for a term commencing on or prior to March 1, 1941.

This was the only possible grounds set out in the Regulation under which petitioner might possibly get relief. The petition for adjustment of rent was denied by the local Area Rent Director on January 16, 1943 (R. 43) and petitioner filed its protest therefrom, (R. 10-13) which protest was denied on May 21, 1943 by the respondent Price Administrator acting through the Regional Director upon his opinion that the lease on the apartment in question was not for a term commencing on or prior to March 1, 1941 (R. 34-36). Therefore, petitioner was denied any relief although concededly he would be forced to charge less than an adequate rent for his property, if the Regulation and the Administrator's ruling were valid.

Petitioner then commenced this action in the Emergency Court of Appeals by filing its complaint on June 16, 1943, challenging the validity of the Administrator's order and Regulation (R. 3-4) and on September 1, 1943 it moved to amend its complaint to add a paragraph as follows:

"13. In the event that the Emergency Price Control Act be so construed as to authorize the Administrator to issue a Regulation which would permit the result contended for by the Administrator, then and in such event the said Act is unconstitutional and invalid as being in violation of the fifth Amendment to the Constitution of the United States, in that it would result in the deprivation or taking of property without due process of law and further, would be invalid as being in violation of the Constitution of the United States in constituting an unlawful delegation of legislative power and in authorizing an arbitrary and capricious action by an administrative agency" (R. 61-62).

The Court below denied this motion on September 23, 1943 (R. 63) and on the same date heard oral argument upon this case. On November 2, 1943 the Court rendered its opinion (R. 65-67) and entered the Judgment sought to be reviewed here, (R. 69), which judgment discussed the complaint.

## II.

### **Basis of This Court's Jurisdiction to Review the Judgment.**

1. The date of the judgment to be reviewed is November 2, 1943, and the date of this petition for writ of certiorari is December 1, 1943.

2. The statutory provision which sustains the jurisdiction of this Court is Sec. 204 (d) of the Emergency Price Control Act of 1942, Public Law No. 421, 77th Congress, 2nd Session, Chapter 26, 56 Stat.—which provides as follows:

"Within thirty (30) days after entry of a judgment or order, interlocutory or final, by the Emergency



Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment in a Circuit Court of Appeals as provided in section 240 of the Judicial Code, as amended (U. S. C.; 1934 Ed., Title 28, Sec. 347).—”

3. The statute, the constitutionality, construction and application of which is involved, is the said Emergency Price Control Act of 1942 which, in substance, delegates to the Administrator of the Office of Price Administration the power to fix prices of commodities and to fix rents for housing accommodations anywhere throughout the United States at such rates as in his judgment he deems fair and equitable. Only the portion of the Act relating to rents is here involved.

### III.

#### **Questions Presented.**

1. May not the validity of the Emergency Price Control Act of 1942 or of a maximum Regulation of the Price Administrator issued pursuant thereto be raised for the first time upon an appeal to the Emergency Court of Appeals from an order denying a landlord's petition for relief from an order of the Price Administrator purporting to be made pursuant to his Regulation, in view of the provisions of the Act which confer exclusive jurisdiction upon the Emergency Court of Appeals to pass upon questions of the validity of the Act and to review the Regulations and orders of the Price Administrator.

2. Is the Emergency Price Control Act of 1942 unconstitutional as

A. Illegally delegating legislative power to the Price Administrator; and

B. Being in violation of the due process clause of the Fifth Amendment because no lawful standard is prescribed in the Act for determining reasonable rent rates?

3. Is the challenged rent Regulation unconstitutional and void as being in violation of the due process clause of the Fifth Amendment of the Federal Constitution in that

A. It retroactively fixes rents and thus injuriously effects fixed contract rights of owners of rented property; and

B. It fixes rents arbitrarily without reference to a reasonable rate and requires the furnishing of service even though it be at a loss; and

C. It retroactively fixed rates without lawful notice, findings of fact or effective opportunity for the parties concerned to be heard.

4. Does the judgment of the Court below confirm an arbitrary and capricious action of the Price Administrator in applying his Regulation to the facts presented upon the petition of this landlord for relief?

#### IV.

##### **Reasons Relied On for Allowance On Writ.**

1. The Emergency Court of Appeals has decided an important question of federal and administrative law which has not, but should be, settled by this Court, namely, whether in order to question the validity of the Emergency Price Control Act of 1942 or of a Regulation issued pursuant thereto, the questions of such validity must first be raised before the Price Administrator and if not so raised, will not be considered by the Emergency Court of Appeals. This holding conflicts with the provisions of the Emergency Price Control Act of 1942 and with the hold-

ings of this Court to the effect that the construction of statutes ultimately is solely for the Courts.

Sections 204(a) and 204(d) of Public Law No. 421, 77th Congress, 2nd Session, Chapter 26.

*Chicago, Milwaukee & St. Paul RR. v. McCaull Dinsmore Co.*, 253 U. S. 97, 40 Sup. Ct. 504, 64 L. Ed. 80.

*Hormel v. Helvering*, 312 U. S. 552, 61 Sup. Ct. 35, 85 L. Ed. 1037.

2. The Emergency Court of Appeals has by implication decided an important and vital question of federal law involving the rights of millions of citizens, namely, that the Emergency Price Control Act of 1942 is constitutional which question of law should be, but has not been, settled by this Court. The details of the constitutional question are whether the rent fixing provisions of the Emergency Price Control Act of 1942 are unconstitutional as

A. Illegally delegating legislative power.

*Panama Refining Company v. Ryan*, 293 U. S. 388, 55 Sup. Ct. 241, 79 L. Ed. 446;

*Field & Co. v. Clark*, 143 U. S. 649, 36 L. Ed. 294;

*Wichita RR. v. Public Utilities Commission*, 260 U. S. 48, 43 Sup. Ct. 51, 67 L. Ed. 124.

B. As being in violation of the due process clause of the Fifth Amendment because no lawful standard is prescribed in the Act for determining reasonable rent rates.

*St. Joseph Stockyards Co. v. United States*, 298 U. S. 38, 56 Sup. Ct. 720, 80 L. Ed. 1033.

3. The Emergency Court of Appeals, by its decision, has sanctioned an arbitrary and capricious action of an administrative officer in sustaining his maximum rent regulation which is unconstitutional and void as being in vio-

lation of the due process clause of the Fifth Amendment, and the decision sanctioning such a regulation requires the exercise of this Court's power of supervision in order to correct such decision. The Regulation is invalid because:

A. It retroactively fixes rents thus injuriously affecting the vested contract rights of the owners of rented property.

*Block v. Hirsh*, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865.

*Edgar A. Levy Leasing Co. v. Siegel*, 258 U. S. 242, 42 Sup. Ct. 289, 66 L. Ed. 595.

*Nichols v. Coolidge*, 274 U. S. 531, 47 Sup. Ct. 710, 71 L. Ed. 1184.

*Welch v. Henry*, 305 U. S. 134, 59 Sup. Ct. 121, 83 L. Ed. 87.

B. It arbitrarily fixes rents without reference to a reasonable rate and requires the furnishing of service even at a loss.

*Block v. Hirsh*, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865.

*Railroad Commission v. Eastern Texas Railroad Co.*, 264 U. S. 79, 44 Sup. Ct. 247, 68 L. Ed. 569.

C. It retroactively fixes rents without lawful notice, proper findings of fact or adequate opportunity for the parties concerned to be heard.

*St. Joseph Stockyards Co. v. United States*, 298 U. S. 38, 56 Sup. Ct. 720, 80 L. Ed. 1033.

*Mahler v. Eby*, 264 U. S. 32, 44 Sup. Ct. 283, 68 L. Ed. 549.

*Morgan v. United States*, 304 U. S. 1, 58 Sup. Ct. 773, 82 L. Ed. 1129.

4. The Emergency Court of Appeals, by its decisions, has confirmed an arbitrary and capricious action of the

Price Administrator in permitting him to apply his rent regulation to the facts presented upon the petitioner's application for relief so as to conflict with and disregard the applicable local law and decisions in his holding that the law of the state in which real estate is situated does not govern in matters affecting such real estate under the Price Control Act and the lower court by sustaining such decision has decided an important question of local law in conflict with the local decisions and the decisions of this Court.

Supreme Court Rule No. 38(5) b, 83 L. Ed. 1654.

*Sunderland v. United States*, 266 U. S. 226, 45 Sup. Ct. 64, 69 L. Ed. 259.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the United States Emergency Court of Appeals commanding that said court certify and send to this Court a full and complete transcript of the record and of the proceedings of said United States Emergency Court of Appeals had in the case numbered and entitled on its docket #55, "*Patrick Cudahy Family Company, a corporation, Complainant, v. Chester Bowles, Price Administrator, Respondent*," to the end that this case may be reviewed and determined by this Court as provided for by the Statutes of the United States and that the judgment therein of said United States Emergency Court of Appeals be reversed by this Court, and for such further relief as this Court may deem proper.

Dated November 30th, 1943.

RICHARD H. TYRRELL,  
*Counsel for Petitioner.*

JACKSON M. BRUCE,  
*Of Counsel.*